

Colette K. Bohatch, Esq. DOCKET FILE COPY ORIGINAL
1575 Eye Street, N.W.
Suite 300
Washington, D.C. 20005

Telephone: 202/289-8400

Facsimile: 202/289-8450

August 4, 1998

BY HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

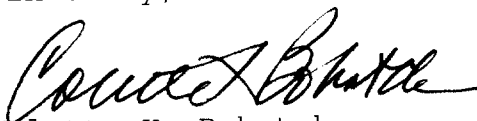
Re: USAC Plan of Reorganization, CC Docket Nos. 97-21 and 96-45
and DA Docket No. 98-1336

Dear Ms. Salas:

Enclosed for filing with the Federal Communications Commission are an original and twelve copies (five copies for the Commissioners and six copies required by the July 15, 1998 notice) of the Comment by the State of Florida Department of Management Services in the above-captioned matter.

Please date-stamp the one extra copy for return to the undersigned. Thank you.

Sincerely,


Colette K. Bohatch

Enclosures

0212

B. Comments.

1. State procurement rules

On Page 6 of the notice, the FCC seeks comments on whether state procurement rules and other state experiences "may serve as useful models" in addressing appeals of USAC decisions. The Florida DMS believes that state procurement rules and practices should not simply be "useful models", but should inform decisions by the Commission and its subordinate agencies in implementation of the Universal Services Fund program in appeals and otherwise; they should be given a strong presumption of regularity, and not be confounded by USAC or Commission administration of the Universal Services Fund program without a compelling Federal interest.

An example of contrary practice is the SLC's interpretation of a Universal Services Fund regulation needlessly inconsistent with the procurement law and practices not only of Florida, but those of many other states as well. See In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, May 11, 1998 (Florida DMS Motion for Declaratory Ruling). In that matter the SLC construed an FCC regulation to deny the Florida DMS an exemption from competitive bidding for renewals of its master telecommunications contracts, despite the State procurement law and practices contemplating such renewals. The SLC's view caused the Florida DMS to seek formal relief from the Commission in early May. The Commission subsequently issued a notice of the Florida DMS's motion seeking comments on the requested interpretation. See Florida DMS Motion Notice for Comment, DA Docket No. 98-977, May 21, 1998.

Comments by the National Association of State Telecommunications Directors ("NASTD"), California, New York, and Washington illustrate that master contracts with renewal options similar to Florida's provisions are used extensively by many states.

While the Florida DMS sought review of the interpretation, it faced impending deadlines for some master contracts and was compelled to take the precautionary step of rebidding them to preserve their eligibility for the Federal subsidy under the Universal Services Fund program. Since rebidding such contracts takes substantial staff time, this step has not only disrupted Florida's contract procedures, but also added to its procurement costs.

Florida's experience suggests that state procurement practices should be considered at the earliest possible decisional stage to guide administration of the Universal Services Fund program to avoid disruption of state procurement planning.

2. Appeal from USAC staff decisions

On page 6 of the notice, the Commission also asks for comments on the need for mandatory appeal from a USAC "division staff" decision to the appropriate USAC Board committee (i.e., Schools and Libraries, Rural Health Care, or High Cost and Low Income).

The Florida DMS believes that fewer layers of appellate review before reaching the Commission would be more efficient for program participants, and that, therefore, "staff" decisions should be regarded as those of the USAC (unless not represented as being so when made). Staff decisions will presumably be based on broad policy guidance already given by the USAC Board committees, and, because of their part-time roles, any detailed admini-

strative action these committees are asked to take (particularly an appellate review) realistically is likely to be determined by staff positions. Thus, explicit appellate review of staff decisions by USAC Board committees (or the full USAC Board) seems a needless additional step that will increase the complexity of the appeal process and merely postpone the inevitable appeal to the CCB and the Commission.

C. Conclusion.

Wherefore, the Florida DMS asks for consideration of its foregoing comments.

Respectfully submitted,

State of Florida
Department of Management Services

By: 
Colette K. Bohatch

Counsel to the State of Florida
Department of Management Services

1575 Eye Street, N.W., Suite 300
Washington, D.C. 20005
Tel: (202) 289-8400

Of Counsel:
Paul A. Rowell, Esq.
General Counsel
State of Florida
Department of Management Services

Dated: August 4, 1998

CERTIFICATE OF SERVICE

I hereby certify that I have this 4th day of August 1998, caused a copy of the foregoing COMMENT BY THE STATE OF FLORIDA DEPARTMENT OF MANAGEMENT SERVICES filed in CC Docket Nos. 97-21 and 96-45 and DA Docket No. 98-1336 pending before the Federal Communications Commission to be served via U.S. mail, postage prepaid, or by hand delivery, as indicated, upon each person or entity listed below.



Colette K. Bohatch
Counsel to the State of Florida
Department of Management Services

1575 Eye Street, N.W., Suite 300
Washington, D.C. 20005
Tel: (202) 289-8400

Sharon Webber, Esq. (by Hand Delivery)
Federal Communications Commission
2100 M Street, N.W., 8th Floor
Washington, D.C. 20554

International Transcription Service, Inc. (by U.S. mail)
1231 20th Street, N.W.
Washington, D.C. 20037